THE HONOURABLE MRS. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE MS. JUSTICE G. ROHINI

WRIT PETITION No. 8925 of 2006

ORAL ORDER:
(Per T. Meena Kumari, J)

The Writ Petition is filed challenging the order of the respondent in GI No. 940/2001-2002 dated 3.3.2006.

Brief facts of the Writ Petition are that:

The petitioner is a registered dealer under the A.P.G.S.T. Act on the rolls of the respondent and is engaged in the business of execution of contract works. The respondent has issued proceedings dated 3.3.2006 levying a tax of Rs. 13,55,440/- on the petitioner. Challenging the said order, the present Writ Petition has been filed.

Heard the learned counsel for the petitioner, the learned Government Pleader for Commercial Taxes and the learned Spl. Standing Counsel for Commercial Taxes.

It has been contended by the learned counsel for the petitioner that the matter is covered by the judgment of this Court reported in WESTERN INDIA GUNNIES PVT. LTD. Vs. STATE OF A.P.[1]. The learned counsel for the petitioner further submits that without any fresh material, the respondent has wrongly revised the assessment of tax under Section 14(4) of A.P. General Sales Tax Act vide show cause notice dated 3.3.2006.

On the other hand, the learned Government Pleader vehemently opposed the said contention and submitted that the revised show cause notice has been issued in pursuance of the audit objection. Even in the counter also, it is stated that in

pursuance of the audit objection tax has been enhanced and levied a tax of Rs. 5,30,212/- on the petitioner.

The learned counsel for the petitioner submits that in all the petitioner has paid an excess tax of Rs. 4,46,726/- and the petitioner need not pay the revised tax and the respondent is not entitled to collect the said tax.

But, however, the learned counsel for the petitioner further submits that the impugned show cause notice does not disclose the reasons that the revised assessment order is issued in pursuance of the audit objection and no reasons were adduced by the officer to come to such a conclusion.

We had also an occasion to go through the judgment of this Court reported in Western India Gunnies Pvt. Ltd.'s case (1st cited supra) wherein the division bench of this Court has held thus:

> "For the purpose of invoking the jurisdiction under Section 14(4)(cc) of the Act what is relevant is that there should be fresh material, de hors the material available at the time of first assessment, to justify the invoking of jurisdiction for reopening the assessment. Lack of diligence on the part of the assessing authority while passing the order of assessment earlier, is no ground to reopen the assessment."

Under the above circumstances, in this case also, there is no material available to the assessing officer for revising the assessment order.

Accordingly, following the law laid down by this Court reported in Western India Gunnies Pvt. Ltd.'s case(1st cited supra), this Writ Petition is also allowed.

T. MEENA KUMARI, J

G. ROHINI, J

27.11.2007
CHV

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